

Appl. No. : 10/792,145  
Filed : March 3, 2004

### REMARKS

For the reasons provided below, Applicants respectfully submit that the provisional and non-provisional rejections set forth in the Office Action mailed on June 28, 2006 are improper.

I. Provisional Obviousness-Type Double Patenting Rejection over Appl. No. 10/057,295

In the Office Action, the Examiner provisionally rejected Claims 1-21 on obviousness-type double patenting grounds over Claims 1-39 of commonly-owned Appl. No. 10/057,295. Applicants respectfully submit that this provisional rejection is improper because, among other reasons, each independent claim of the present application is patentably distinct from Claims 1-39 of the '295 application. Each independent claim of the present application is discussed below.

#### Independent Claim 1

Claim 1 of the present application is patentably distinct from Claims 1-39 of the '295 application because, among other reasons, neither Claims 1-39, nor the other art of record, describes or suggests "a probe that runs on the application server and monitors the application server during execution of the transaction, wherein the probe generates and reports data indicative of execution times of each of a plurality of application components executed by the application server as part of the transaction." In connection with Claim 1, the Examiner points to Claims 1, 6, 13, 20 and 25 of the '295 application. None of these claims, however, describes or suggests a probe that runs and operates as described in the above-quoted language. Indeed, these claims are not directed to the monitoring of execution times of individual application server components that are executed as part of a transaction.

#### Independent Claim 11

Claim 11 of the present application is patentably distinct from Claims 1-39 of the '295 application because, e.g., neither Claims 1-39, nor the other art of record, describes or suggests the following limitations: "during execution of a user transaction that invokes an application on the application server, monitoring execution of the application with a probe that runs on the application server to measure execution times associated with each of a plurality of application components invoked by the user transaction, to thereby generate a set of transaction-specific time measurements."

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#### Independent Claim 19

Claim 19 of the present application is patentably distinct from Claims 1-39 of the '295 application because, e.g., neither Claims 1-39, nor the other art of record, describes or suggests an agent component and probe that operate as follows: "the agent component specifies that a transaction is to be monitored by the probe by including encoded information within a corresponding transaction request sent to the web site," and "the probe is responsive to the encoded information by monitoring execution of the transaction to generate application server performance data for the transaction."

#### Dependent Claims

Because each independent claim of the present application is patentably distinct from Claims 1-39 of the '295 application, the dependent claims of the present application are also patentably distinct from Claims 1-39.

## II. Provisional Obviousness-Type Double Patenting Rejection over Appl. No. 10/038,098

The Examiner also provisionally rejected Claims 1-21 on obviousness-type double patenting grounds over Claims 1-3, 6-19 and 22-34 of commonly-owned Appl. No. 10/038,098. Applicants respectfully submit that this provisional rejection is improper because, among other reasons, each independent claim of the present application is patentably distinct from Claims 1-3, 6-19 and 22-34 of the '098 application. Each independent claim of the present application is discussed below.

#### Independent Claim 1

Claim 1 of the present application is patentably distinct from Claims 1-3, 6-19 and 22-34 of the '098 application because, among other reasons, neither Claims 1-3, 6-19 and 22-34 nor the other art of record describes or suggests "a probe that runs on the application server and monitors the application server during execution of the transaction, wherein the probe generates and reports data indicative of execution times of each of a plurality of application components executed by the application server as part of the transaction." In connection with Claim 1, the Examiner points to Claims 1, 13, 25 and 27 of the '098 application. None of these claims, however, describes or suggests a probe that runs on the application server. In addition, none of

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these claims describes or suggests a probe that generates data indicative of execution times of each of a plurality of application components executed as part of a transaction.

#### Independent Claim 11

Claim 11 of the present application is patentably distinct from Claims 1-3, 6-19 and 22-34 of the '098 application because, e.g., neither Claims 1-3, 6-19 and 22-34 nor the other art of record describes or suggests the following limitations: "during execution of a user transaction that invokes an application on the application server, monitoring execution of the application with a probe that runs on the application server to measure execution times associated with each of a plurality of application components invoked by the user transaction, to thereby generate a set of transaction-specific time measurements." Claims 1-3, 6-19 and 22-34 do not describe a probe that runs on the application server, let alone a probe that measures execution times as described in the claim.

#### Independent Claim 19

Claim 19 of the present application is patentably distinct from Claims 1-3, 6-19 and 22-34 of the '098 application because, e.g., neither Claims 1-3, 6-19 and 22-34 nor the other art of record describes or suggests "a probe that runs on an application server of the web site, wherein the probe includes functionality for selectively monitoring the execution of transactions by the application server to collect application server performance data." As mentioned above, Claims 1-3, 6-19 and 22-34 do not even mention a probe that runs on the application. Claim 19 is also distinct because Claims 1-3, 6-19 and 22-34 of the '098 application do not describe or suggest an agent component that "specifies that a transaction is to be monitored by the probe by including encoded information within a corresponding transaction request sent to the web site."

#### Dependent Claims

Because each independent claim of the present application is patentably distinct from Claims 1-3, 6-19 and 22-34 of the '098 application, the dependent claims of the present application are also patentably distinct from Claims 1-3, 6-19 and 22-34.

### III. Obviousness-Type Double Patenting Rejection over U.S. Pat. 6,738,933

The Examiner also rejected Claims 1-21 on obviousness-type double patenting grounds over Claims 1-24 of commonly-owned U.S. Pat. 6,738,933. Applicants respectfully submit that

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this rejection is improper because, among other reasons, each independent claim of the present application is patentably distinct from Claims 1-24 of the '933 patent. Each independent claim of the present application is discussed below.

#### Independent Claim 1

Claim 1 of the present application is patentably distinct from Claims 1-24 of the '933 patent because, among other reasons, neither Claims 1-24 nor the other art of record describes or suggests "a probe that runs on the application server and monitors the application server during execution of the transaction, wherein the probe generates and reports data indicative of execution times of each of a plurality of application components executed by the application server as part of the transaction." In connection with Claim 1, the Examiner points to Claims 1, 10, 13, 17, 18 and 19 of the '933 patent. None of these claims, however, describes or suggests a probe that runs on the application server and generates and reports data indicative of execution times of each of a plurality of application components executed as part of a transaction.

#### Independent Claim 11

Claim 11 of the present application is patentably distinct from Claims 1-24 of the '933 patent because, e.g., neither Claims 1-24 nor the other art of record describes or suggests the following limitations: "during execution of a user transaction that invokes an application on the application server, monitoring execution of the application with a probe that runs on the application server to measure execution times associated with each of a plurality of application components invoked by the user transaction, to thereby generate a set of transaction-specific time measurements."

#### Independent Claim 19

Claim 19 of the present application is patentably distinct from Claims 1-24 of the '933 patent because, e.g., neither Claims 1-24 nor the other art of record describes or suggests an agent and a probe that operate as follows: "the agent component specifies that a transaction is to be monitored by the probe by including encoded information within a corresponding transaction request sent to the web site," and "the probe is responsive to the encoded information by monitoring execution of the transaction to generate application server performance data for the transaction."

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#### Dependent Claims

Because each independent claim of the present application is patentably distinct from Claims 1-24 of the '933 patent, the dependent claims of the present application are also patentably distinct from Claims 1-24.

#### IV. Anticipation Rejection over Meyer

Applicants respectfully submit that the anticipation rejection of Claims 1-21 over U.S. Pat. 6,289,378 to Meyer et al. ("Meyer") is improper because, among other reasons, Meyer does not explicitly or inherently disclose all of the limitations of any independent claim. Examples of specific claim limitations that are not disclosed by Meyer are provided below.

##### Independent Claim 1

With respect to Claim 1, Meyer does not disclose, e.g., "a probe that runs on the application server and monitors the application server during execution of the transaction, wherein the probe generates and reports data indicative of execution times of each of a plurality of application components executed by the application server as part of the transaction." In connection with these limitations, the Examiner points to the abstract, Figure 1, and col. 7, lines 45-65 of Meyer. None of these cited portions, however, discloses "a probe that runs on the application server and monitors the application server during execution of the transaction."

At column 7, line 60 to column 8, line 52, Meyer describes a process for monitoring the response time of an ERP application that runs on a server. The disclosed process, however, does not involve the use of a probe that runs on the server. Rather, the response times are monitored via client computers that send requests to the ERP application/server over a network connection, and monitor the resulting response times. Further, nothing in Meyer suggests the capability to generate data "indicative of execution times of each of a plurality of application components executed by the application server as part of the transaction." In this regard, Meyer apparently monitors only the overall response times as seen from the client computers, and not the execution times of specific application components.

Meyer also fails to disclose a reports server that "provides a breakdown indicating an amount of time spent by each of the plurality of application components executing the transaction." Although Meyer discloses a "management center 1105" that collects the response

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times measured by the client computers, nothing in Meyer suggests that this management center can provide a breakdown indicating an amount of time spent by each of the plurality of application components executing a transaction. Indeed, since the time measurements collected by Meyer's management center apparently consist of overall response times as seen from client computers, Meyer's management server apparently would not be capable of providing such a breakdown.

#### Independent Claim 11

With respect to Claim 11, Meyer does not disclose, e.g., "during execution of a user transaction that invokes an application on the application server, monitoring execution of the application with a probe that runs on the application server to measure execution times associated with each of a plurality of application components invoked by the user transaction, to thereby generate a set of transaction-specific time measurements." As mentioned above, Meyer's ERP-application monitoring process does not involve the use of a probe that runs on the monitored application server. Rather, the monitoring in Meyer is performed by client computers that send requests to the ERP server and monitor the resulting response times. In addition, nothing in Meyer suggests that the disclosed ERP-application monitoring process involves measuring execution times associated with each of a plurality of application components invoked by a transaction.

Meyer also fails to disclose "a report that provides a transaction-specific breakdown of times spent by each of the plurality of application components during processing by the application server of the user transaction."

#### Independent Claim 19

With respect to Claim 19, Meyer does not disclose "a probe that runs on an application server of the web site, wherein the probe includes functionality for selectively monitoring the execution of transactions by the application server to collect application server performance data." Nothing in the cited portions of Meyer suggests the existence of such a probe, let alone a probe that operates as defined in the remainder of the claim. In addition, Meyer does not disclose an agent component that "specifies that a transaction is to be monitored ... by including encoded information within a corresponding transaction request sent to the web site." It is not clear from the Office Action how the Examiner is reading this claim language on Meyer's disclosure.

Dependent Claims

Because Meyer does not disclose all of the limitations of any independent claim, the anticipation rejections of the independent and dependent claims are improper. In addition, the dependent claims recite numerous additional limitations that are not disclosed by Meyer. As one example, Meyer does not disclose “a code instrumentation component that dynamically instruments the application components at load time,” as required by Claim 4. Indeed, nothing in Meyer suggests that the monitoring process disclosed therein involves any form of instrumentation of application components.

V. Anticipation Rejection over Fraenkel

Applicants respectfully submit that the anticipation rejection of Claims 1-21 over U.S. Pub. 2002/0198985 to Fraenkel et al. (“Fraenkel”) is improper because, among other reasons, Fraenkel does not explicitly or inherently disclose all of the limitations of any independent claim. Examples of specific claim limitations that are not disclosed by Fraenkel are provided below.

Independent Claim 1

With respect to Claim 1, Fraenkel does not disclose, e.g., “a probe that runs on the application server and monitors the application server during execution of the transaction, wherein the probe generates and reports data indicative of execution times of each of a plurality of application components executed by the application server as part of the transaction.” In connection with these limitations, the Examiner points to the following portions of Fraenkel: the abstract; Figures 1, 17, 20, 21 and 25; and paragraphs 11 and 49. These portions do not, however, disclose a probe that runs and operates as described in the above-quoted language.

Fraenkel also does not disclose a reports server that “provides a breakdown indicating an amount of time spent by each of the plurality of application components executing the transaction.” Nothing in Fraenkel suggests that the reports server 36 disclosed therein is capable of generating such a breakdown.

It is not clear from the Office Action what component of Fraenkel the Examiner is treating as the “probe” required by Claim 1. In addition, it is not clear how the Examiner is construing Fraenkel as disclosing the recited “breakdown indicating an amount of time spent by

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each of the plurality of application components executing the transaction.” If the Examiner maintains the rejection over Fraenkel, he is respectfully requested to clarify these issues.

#### Independent Claim 11

With respect to Claim 11, Fraenkel does not disclose, e.g., “during execution of a user transaction that invokes an application on the application server, monitoring execution of the application with a probe that runs on the application server to measure execution times associated with each of a plurality of application components invoked by the user transaction, to thereby generate a set of transaction-specific time measurements.” The cited portions of Fraenkel simply do not disclose these limitations. If the Examiner maintains the rejection, he is respectfully requested to identify the component in Frankel he is treating as the recited “probe.” The Examiner is also respectfully requested to explain how he is reading Fraenkel as disclosing the measurement of “execution times associated with each of a plurality of application components.”

Fraenkel also does not disclose “a report that provides a transaction-specific breakdown of times spent by each of the plurality of application components during processing by the application server of the user transaction.” The breakdown reports disclosed in Fraenkel do not include this information.

#### Independent Claim 19

With respect to Claim 19, Fraenkel does not disclose an agent and a probe that operate as follows: “the agent component specifies that a transaction is to be monitored by the probe by including encoded information within a corresponding transaction request sent to the web site,” and “the probe is responsive to the encoded information by monitoring execution of the transaction to generate application server performance data for the transaction.” If the Examiner maintains the rejection over Fraenkel, he is respectfully requested to identify the particular components or elements in Fraenkel that he is treating as the “probe” and “encoded information” recited in Claim 19.

#### Dependent Claims

Because Fraenkel does not disclose all of the limitations of any independent claim, the anticipation rejections of the independent and dependent claims are improper. In addition, the dependent claims recite numerous additional limitations that are not disclosed by Fraenkel. As



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one example, Fraenkel does not disclose "a code instrumentation component that dynamically instruments the application components at load time," as required by Claim 4.

VI. Request for Interview

Applicants' representative would welcome the opportunity to discuss the pending claims and the cited art with the Examiner by telephone. Accordingly, if any issues remain that can potentially be resolved by telephone, the Examiner is invited to call the undersigned attorney of record at his direct dial number of 949-721-2950.

VII. Conclusion

In view of the foregoing, Applicants submit that the obviousness-type double patenting and anticipation rejections are improper, and request that these rejections be withdrawn.

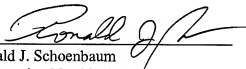
Respectfully submitted,

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Dated: \_\_\_\_\_

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